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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45  
)  
)

To: The Commission

**REPLY COMMENTS OF DOBSON COMMUNICATIONS CORPORATION ON THE  
SUPPORTED SERVICES RECOMMENDED DECISION**

Ronald L. Ripley, Esq.  
Vice President & Sr. Corporate Counsel  
Dobson Communications Corporation  
14201 Wireless Way  
Oklahoma City, OK 73134  
(405) 529-8500

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## SUMMARY

The record developed thus far in this proceeding clearly supports the rejection of equal access as an additional supported service. Only the rural ILECs stand to benefit from adding equal access to the list of supported services; they support the inclusion of equal access because of their desire to restrict competitive entry by wireless carriers. However, the issues involved in this proceeding are more appropriately resolved by focusing on the interest of consumers, as opposed to what best preserves the rural ILECs' monopoly and lock on universal service support.

CMRS carriers would be subject to a huge economic undertaking in order to implement equal access. As a result, they are likely to be deterred from seeking Eligible Telecommunications Carrier ("ETC") status. Consumers in rural and high cost areas would thus be deprived of the substantial benefits of wireless-based sources of competition, a result which is clearly contrary to the public interest and the consumer-focused and pro-competitive goals of the Telecommunications Act of 1996.

It is quite telling that none of the interexchange carriers commenting in this proceeding, who would most likely benefit from an equal access requirement, filed in support of adding equal access to the list of supported services. In fact, the interexchange market is already fully and effectively competitive and thus requiring wireless carriers to deploy equal access simply will not make the interexchange market more competitive than it already is. It is thus impossible to see how expanding the equal access requirement to wireless providers seeking ETC designation serves any useful purpose. Furthermore, both of the public service commissions ("PSC") that commented in this proceeding oppose the addition of equal access. These PSCs believe that adding equal access will reduce competition in rural and high cost areas to the detriment of consumers. Finally, the rural ILECs received no support from their larger ILEC counterparts, none of whom filed comments in support of adding equal access as an additional supported service.

There are numerous public interest reasons for rejecting the inclusion of equal access: the widely favored bundle of minutes offered under "one-rate" plans that can be used for either local or long distance calling is inconsistent with equal access, and the advantageous long distance arrangements negotiated by wireless carriers in order to offer these rate plans negates any advantage that may result from a consumer's ability to select a particular long distance carrier; inclusion of equal access would force the Commission to impose archaic "local" and "long distance" service boundaries to determine when a wireless call is handed off to an interexchange carrier; and the costs to wireless carriers, including Dobson, to implement equal access would be dramatic and may deter carriers from seeking or retaining ETC status, thereby causing a reduction in service or pull-out of entire areas, or simply force them to choose to reduce or eliminate service in many high cost areas, thereby depriving consumers of choice. Given these public interest benefits that result from the lack of an equal access requirement, it is clear that its addition is at a minimum unnecessary, and in fact adverse to the interests of rural consumers. The Commission must therefore reject the equal access proposal.

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Dobson Communications Corporation ("Dobson") hereby submits its reply comments regarding the *Notice of Proposed Rulemaking*<sup>1</sup> seeking comment on the Federal-State Joint Board's ("Joint Board") Recommended Decision on the definition of "supported services" for Universal Service Fund ("USF") purposes.<sup>2</sup>

The record developed thus far in this proceeding clearly supports the rejection of equal access as an additional supported service. As Dobson pointed out in its initial comments, it is unclear who would benefit from adding equal access to the list of supported services, but it is certainly not the consumer.<sup>3</sup> As discussed below, because of the huge economic undertaking involved in implementing equal access, CMRS carriers are likely to be deterred from seeking Eligible Telecommunications Carrier ("ETC") status. Consumers in rural and high cost areas

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 03-13 (rel. Feb. 25, 2003).

<sup>2</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 17 F.C.C.R. 14,095 (2002) ("*Recommended Decision*").

<sup>3</sup> Comments of Dobson at 18.

would thus be deprived of the substantial benefits of wireless-based sources of competition, a result which is clearly contrary to the public interest. Further, it is impossible to ignore that the interexchange carriers, whom it would appear to benefit, oppose the addition of equal access. The large ILECs and the state public service commissions that participated in this proceeding also oppose its addition. The only support for adding an equal access requirement comes from the rural ILECs, and this support can only be explained as a veiled attempt to restrict competitive entry by wireless carriers. Therefore, in order to best serve the public interest, and particularly the consumers of telecommunications services in rural and high cost areas, the Commission must reject the proposal to add equal access as a supported service.

**I. THE ISSUES INVOLVED IN THIS PROCEEDING ARE MOST APPROPRIATELY RESOLVED BY FOCUSING ON THE INTERESTS OF CONSUMERS, NOT THE INCUMBENT RURAL ILECS.**

By focusing the equal access debate on what is best for the consumer (as opposed to what best preserves the rural ILECs' monopoly and lock on universal service support), the decision to reject equal access as a supported service becomes an obvious one. In 1997, the Commission made universal service funding available to competing carriers,<sup>4</sup> thereby removing the barrier to competition that existed when support was provided solely to ILECs. By doing so, the Commission was able to carry out Congress' mandate, set forth in the Telecommunications Act of 1996, to "devise methods to ensure that '[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas . . . have access to telecommunications and information services . . . at rates that are reasonably comparable to rates

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<sup>4</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 F.C.C.R. 8776, 8858-59 (1997) ("*Report and Order*").

charged for similar services in urban areas.”<sup>5</sup> The Commission found that excluding wireless carriers from being eligible to receive universal service support would be inconsistent with these consumer-focused, pro-competitive goals of the 1996 Act.<sup>6</sup> Therefore, a decision that would impact universal service support, such as whether to add equal access, should be based on how it will impact consumers. As explained below, it is clear that the consumers only benefit by the rejection of equal access.

Certain commenters, however, attempt to shift the focus from the consumer by arguing that regulatory parity somehow justifies adding equal access.<sup>7</sup> Although both wireline and wireless carriers are capable of providing the supported services currently listed in Section 54.101(a) of the Commission’s rules,<sup>8</sup> they provide those services utilizing entirely different technologies. The Commission clearly acknowledges this difference, stating “any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under section 214(c)(1).”<sup>9</sup> Wireless carriers are not otherwise required to offer all of the services offered by wireline carriers, and the same is true for wireline carriers, who, for example, are not required to offer mobility.<sup>10</sup> Thus,

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<sup>5</sup> *Report and Order*, 12 F.C.C.R. at 8780 (citing 47 U.S.C. § 254(b)(3), codifying Section 101(a) of the Telecommunications Act of 1996.).

<sup>6</sup> *See Id.* at 8858. National Telecommunications Cooperative Association is thus incorrect when stating “Congress never intended universal service support to be used as the basis for stimulating competition in rural and high-cost areas.” Comments of NCTA at 5.).

<sup>7</sup> *See* Comments of NCTA 6-7; Comments of OPASTCO at 14-16.

<sup>8</sup> 47 C.F.R. § 54.101(a).

<sup>9</sup> *Report and Order*, 12 F.C.C.R. at 8858.

<sup>10</sup> *See* Comments of RCA at 7 (“CMRS carriers should not be required to provide equal access merely because ILECs offer it. If that were the case, the principle of competitive neutrality would dictate that ILECs provide mobile (continued on next page)

establishing regulatory parity should not be a basis for adding equal access to the list of supported services. Incumbent LECs, which were historically monopolies, operate in a regulatory environment that is different from competitive providers, such as CMRS carriers. Equal access is part of this monopoly-era regulation,<sup>11</sup> which has nothing to do with the eligibility to receive USF support. Therefore, wireless carriers should not be forced to provide equal access simply because it is offered by ILECs for historically very different purposes.

## **II. NONE OF THE INTEREXCHANGE CARRIERS COMMENTING IN THIS PROCEEDING EXPRESSED SUPPORT FOR ADDING EQUAL ACCESS.**

It is quite telling that none of the interexchange carriers commenting in this proceeding, who would most likely benefit from an equal access requirement, filed in support of adding equal access to the list of supported services. Dobson believes that Nextel Communications, Inc. and Nextel Partners, Inc. (collectively, "Nextel") properly expose the rural ILECs' agenda. Nextel states: "That the rural ILECs are 'championing' the interests of IXC's, who themselves do not support an additional requirement, demonstrates far better than anything Nextel can say why a pro-competitive policy for the landline network in the 1980s should not be twisted into a trap against competition."<sup>12</sup> The rural ILECs support the addition of equal access only because they are threatened by the competition from wireless carriers, and know that adding an equal access requirement may deter wireless carriers from seeking ETC status.

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phones and Enhanced 911 location services."). See also Section 22.901(a) of the Commission's rules, 47 C.F.R. § 22.901(a), which requires cellular telephone licensees to offer mobile service.

<sup>11</sup> See *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, *Notice of Inquiry*, 17 F.C.C.R. 4015, 4016 (2002).

<sup>12</sup> Comments of Nextel at 8-9.

Sprint Corporation ("Sprint") specifically opposes inclusion. Sprint states that "the interexchange market is already fully and effectively competitive" and explains that "requiring wireless carriers to deploy equal access simply will not make the interexchange market more competitive than it already is."<sup>13</sup> Given that the original purpose for the equal access requirement was to ensure that competition developed in the long distance industry, it is impossible to see how, in light of Sprint's statement that long distance is very competitive, expanding the equal access requirement to wireless providers seeking ETC designation serves any useful purpose. The comments of both MCI and Qwest Communications International, Inc. are noticeably silent on this issue. No other interexchange carrier saw fit to comment. While the rural ILECs argue that adding equal access will improve competition, the interexchange carriers, who obviously understand the interexchange market better than the rural ILECs, believe that the addition of equal access is not warranted. The lack of interexchange carrier support for adding equal access should be given great weight by the Commission.

### **III. THE PUBLIC SERVICE COMMISSIONS COMMENTING IN THIS PROCEEDING OPPOSE INCLUSION OF EQUAL ACCESS.**

Both of the public service commissions ("PSC") that commented in this proceeding also oppose the addition of equal access. Not only are these commenters well positioned to comment on this issue based on their status as regulators, commissioners from both of these public service commissions sit on the Joint Board and are therefore well versed in the universal service system. Based on their extensive knowledge, both of these PSCs believe that adding equal access will reduce competition in rural and high cost areas to the detriment of consumers. The State of

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<sup>13</sup> Comments of Sprint Corporation at 10-11. Thus, there is no need for any "concern placed on providing competition in the toll market," Comments of Nebraska Rural Independent Companies at 6, nor any reason for "enhancing competition in the long distance market." Comments of OPASTCO at 8.



Florida believes that because "CMRS carriers may provide a lower cost source of competition for local service in some rural and high-cost areas given the cost associated with deploying loops . . . we believe that the addition of equal access as a required service for all ETCs would not serve the public interest because it would reduce competition in rural and high-cost areas."<sup>14</sup> Similarly, the New York State Public Service Commission stated that "requiring CMRS providers to include equal access may have the undesired effect of reducing competitive providers in rural and high cost areas, which would also not be in the public interest because it could jeopardize the provision of service in these areas."<sup>15</sup>

These PSCs oppose inclusion of equal access because they view the issue from the perspective of the consumer; they understand that its inclusion would reduce competition to the detriment of the consumer. The rural ILECs, however, only view this issue from their own perspective and support the inclusion of equal access because the elimination of competition from wireless carriers is beneficial to them.

#### **IV. NONE OF THE LARGE ILECS COMMENTING IN THIS PROCEEDING EXPRESSED SUPPORT FOR ADDING EQUAL ACCESS.**

The large ILECs apparently do not share the viewpoint of their rural counterparts. While SBC Communications, Inc was noticeably silent on the issue, Verizon opposed the addition of an equal access requirement.<sup>16</sup> And the USTA, which represents the local exchange carrier industry, not only opposes its inclusion but advocates that the Commission eliminate the equal

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<sup>14</sup> Comments of the State of Florida Public Service Commission at 6.

<sup>15</sup> Comments of the State of New York Department of Public Service at 7.

<sup>16</sup> Comments of Verizon at 1-2, 4.

access obligations currently imposed on local exchange carriers.<sup>17</sup> Again, without the support of the non-rural ILECs, it becomes abundantly clear that there are no public interest benefits to the addition of equal access and the rural ILECs' advocacy for equal access is simply an attempt to eliminate competition from wireless carriers.

**V. THE INCLUSION OF AN EQUAL ACCESS REQUIREMENT WOULD CLEARLY BE CONTRARY TO THE PUBLIC INTEREST.**

The comments opposing equal access thoroughly demonstrate why equal access must not be added as a supported service. Like many of the other commenters, Dobson explained that equal access must be rejected because it would be contrary to Section 332 and Section 254, and would disserve the public interest by decreasing competition and its attendant benefits.<sup>18</sup> Dobson wishes to take this opportunity to further emphasize the public interest aspect of this issue. As demonstrated below, the Commission should reject equal access because it would be in the best interest of consumers.

Other than the rural ILECs, the only commenter in favor of the inclusion of equal access was the National Association of State Utility Consumer Advocates ("NASUCA"). NASUCA, however, seems to have been swayed by its perception of the Joint Board's *Recommended Decision* that the "opponents [of adding equal access] focus almost exclusively on the impact on wireless carriers rather than the overall public interest."<sup>19</sup> With the benefit now of Dobson's and

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<sup>17</sup> Comments of USTA at 6.

<sup>18</sup> See Comments of Dobson at 15-20. See also Comments of Cellular Telecommunications & Internet Association ("CTIA"), Centennial Communications Corp., Nextel, Rural Cellular Association and Alliance of Rural CMRS Carriers ("RCA"), Sprint, State of Florida PSC, State of New York Department of Public Service, United States Cellular Corporation, USTA, Verizon, Verizon Wireless, and Western Wireless Corporation.

<sup>19</sup> Comments of the NASUCA at 3.

the other comments filed in this proceeding, however, the public interest reasons for excluding equal access, to the benefit of rural telephony consumers, are clearly made apparent. Dobson does not disagree that an otherwise necessary supported service should not be excluded just because one group of carriers has chosen not to provide it. But this begs the question whether the public interest would be served by including the service. Dobson supports the following public interest reasons offered by other commenters for rejecting equal access, which reinforce Dobson's initial comments:

- The bundle of minutes offered under "one-rate" plans that can be used for either local or long distance calling is inconsistent with equal access.<sup>20</sup> Under these "one-rate" plans, wireless customers do not expect their providers to offer equal access.<sup>21</sup> The use of bundled minutes allows carriers to negotiate advantageous long distance arrangements with long distance providers.<sup>22</sup> This benefit, which is passed along to customers, negates any advantage that may result from a consumer's ability to select a particular long distance carrier. In fact, because long distance calls are included in their monthly minutes, many wireless customers purposely make their long distance calls from their mobile phones to avoid long distance charges.<sup>23</sup> It is hard to imagine why any rural subscriber would rather pay higher fees to be able to dial a few less digits to access a

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<sup>20</sup> Comments of CTIA at 9.

<sup>21</sup> See Comments of RCA at 4.

<sup>22</sup> See Comments of Western Wireless at 4.

<sup>23</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Seventh Report*, 17 F.C.C.R. 12,985, 13,108 (2002) (The free nationwide long distance included in many calling plans offered by nationwide wireless carriers is resulting in a decline in landline long distance calling volumes as wireless customers are replacing some wireline long distance usage with wireless.); Shelley Emling, *Future Seems Dim for Long-Distance; Wireless Plans, Phone Cards, Net All Factors*, Atlanta Journal-Constitution, Mar. 30, 2003 (A growing number of Americans have already ended their conventional long distance service by making all their long distance calls on their cell phones.); Paul Wilson, *Living Without Landline Viable Option for West Virginia College Students*, The Charleston Gazette, Feb. 14, 2003 (College students are not using the landline phones in their dorm rooms for long distance because their mobile phones have unlimited nights and weekends.); Dan Meyer, *Landline Displacement To Be Continued Market Driver*, RCR Wireless News, Nov. 4, 2002 (Long distance landline displacement is occurring because of low per-minute wireless rates and because long distance is included on many wireless rate plans.).

presubscribed interexchange carrier, rather than simply taking advantage of wireless one-rate service plans.<sup>24</sup>

- The ability of CMRS providers to offer these widely favored one rate plans with bundles of minutes flows directly from Section 332(c)(8), which exempts CMRS carriers from equal access requirements.<sup>25</sup> It is the very success of these plans that argues against adding equal access.<sup>26</sup> Further, the Commission has stated that "one-rate" plans are in the public interest because they indicate a competitive marketplace.<sup>27</sup>
- Inclusion of equal access would force the Commission to impose archaic "local" and "long distance" service boundaries to determine when a wireless call is handed off to an interexchange carrier.<sup>28</sup> Given the ubiquity of nationwide calling plans offered by wireless carriers, which dispense with any need to differentiate between a local call and a long distance call, having to establish such distinctions now would be a ridiculous and wasteful exercise.
- The costs to wireless carriers to implement equal access would be dramatic. USCC estimates that as a result of this change it would incur at least \$600,000 in additional long distance charges per month in three states where it provides service, as well as approximately \$100,000 in one time "hardware" costs to modify "dedicated trunk groups" and \$5,000 per month in recurring charges for these modifications.<sup>29</sup> Dobson estimates that to provide equal access company wide, it would incur approximately \$3 million in capital costs, which includes hardware and software purchases, translation costs, and connection fees. Dobson would also annually incur approximately \$250,000 in recurring circuit costs, which are the fees paid to the LECs to route the calls to the proper long distance carrier. Any consumer would agree that such expenditures are far better made to improve service to outlying areas and reduce rates.
- To implement equal access, wireless carriers would be required to revise their billing and back office systems.<sup>30</sup> Furthermore, equal access would result in more

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<sup>24</sup> See Comments of CTIA at 9.

<sup>25</sup> *Id.* at 8; See Comments of USCC at 6.

<sup>26</sup> Comments of CTIA at 8.

<sup>27</sup> *Id.* at n.23.

<sup>28</sup> See Comments of USCC at 6.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.*

complex billing and rating issues for consumers (e.g., receiving bills from two carriers).<sup>31</sup>

- As a result of the increased regulatory and economic burden placed on wireless carriers, carriers might be deterred from seeking or retaining ETC status, thereby causing a reduction in service or pull-out of entire areas.<sup>32</sup> For those wireless carriers that do choose to retain their ETC status, the significant costs that result from implementing equal access may force them to choose to reduce or eliminate service in many high cost areas,<sup>33</sup> thereby depriving consumers of choice.<sup>34</sup>
- Under a CMRS equal access requirement, the Commission would need to re-examine the right of CMRS carriers to collect access charges from interexchange carriers.<sup>35</sup>

The above arguments demonstrate that the public interest is better served without an equal access requirement for ETCs. Consumers clearly enjoy the choices of calling plans offered by wireless carriers. Given that both local and long distance calls are included in the bundles of minutes, the long distance carrier utilized by the wireless provider is irrelevant. As a result of competition, when shopping for a CMRS provider, consumers are able to find a rate plan that fits their needs. For this reason, customers do not ask for equal access. Given these public interest benefits that result from the lack of an equal access requirement, it is clear that its addition is at a minimum unnecessary, and in fact adverse to the interests of rural consumers. Therefore, based on a public interest standpoint alone, Dobson contends that the Commission must reject the equal access proposal.

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<sup>31</sup> Comments of CTIA at 10.

<sup>32</sup> *Id.*; Comments of Western Wireless at 5; Comments of Florida PSC at 6; Comments of NY PSC at 7.

<sup>33</sup> See Comments of CTIA at 10.

<sup>34</sup> Comments of Western Wireless at 3.

<sup>35</sup> Comments of CTIA at 13.

## **CONCLUSION**

The comments filed in this proceeding make it clear that the addition of an equal access requirement is not in the public interest as it would result in a reduction of competition in rural and high cost areas. Rural ILECs are threatened by the services offered by wireless carriers and therefore support the addition of equal access in an attempt to prevent wireless carriers from seeking universal service support. Dobson urges the Commission to look past the rural ILECs' self-serving arguments and, for the benefit of the rural consumers, reject adding equal access as a supported service.

Respectfully submitted,

**DOBSON COMMUNICATIONS CORPORATION**

By: /s/ Ronald L. Ripley  
Ronald L. Ripley, Esq.  
Vice President & Sr. Corporate Counsel  
Dobson Communications Corporation  
14201 Wireless Way  
Oklahoma City, OK 73134  
(405) 529-8500

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